

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEHDI ASNAASHARI

Plaintiff,

No. C 13-1308 PJH

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PNY TECHNOLOGIES, INC.

Defendant.

ORDER GRANTING MOTION TO DISMISS

13 Defendant PNY Technology Inc.'s motion to dismiss came on for hearing before this
14 court on May 29, 2013. Plaintiff Mehdi Asnaashari ("plaintiff") appeared through his
15 counsel, Jeannette Vaccaro and John McGuinn. Defendant PNY Technologies, Inc.
16 ("defendant") appeared through its counsel, Christopher Mayer and Sarah Wager. Having
17 read the papers filed in conjunction with the motion and carefully considered the arguments
18 and the relevant legal authority, and good cause appearing, the court hereby GRANTS
19 defendant's motion for the reasons stated at the hearing and as follows.

20 Plaintiff's first cause of action is for breach of contract. Plaintiff concedes that his
21 offer letter characterized his employment as "at will," and specifically stated that his
22 employment "may be terminated by PNY at any time, with or without notice," but argues
23 that the letter also stated that his employment was "subject to PNY's employment policies."
24 Dkt. 10, Ex. B at 2. Plaintiff alleges that defendant violated those policies by terminating his
25 employment for performance reasons without following the applicable procedures
26 governing performance-related terminations. However, plaintiff has not identified the
27 specific policies or procedures that were allegedly breached. Accordingly, plaintiff's first
28 cause of action is DISMISSED with leave to amend, so that plaintiff may identify those

1 policies and/or procedures.

2 Plaintiff's second cause of action is for breach of the implied duty of good faith and
3 fair dealing. Again, plaintiff concedes that his employment was at will, but argues that
4 defendant "act[ed] in bad faith when it terminated plaintiff for the specific purpose of
5 depriving him of the benefits of the offer letter." Dkt. 18 at 5. However, the complaint does
6 not provide any factual support for this assertion, and plaintiff's second cause of action is
7 thus DISMISSED with leave to amend, so that plaintiff may provide such factual support.
8 The court also notes that, as currently pled, plaintiff's second cause of action is partially
9 duplicative of his first cause of action for breach of contract. In his amended complaint,
10 plaintiff shall differentiate the factual allegations supporting his first cause of action (based
11 on defendant's alleged failure to follow its employment policies and procedures) from those
12 supporting his second cause of action (based on defendant's alleged bad faith in
13 terminating plaintiff's employment).

14 Plaintiff's third and fourth causes of action are for promissory fraud and negligent
15 misrepresentation, respectively. The elements of promissory fraud are: (1) a promise
16 made regarding a material fact without any intention of performing it; (2) the existence of
17 the intent not to perform at the time the promise was made; (3) intent to deceive or induce
18 the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5)
19 nonperformance by the party making the promise; and (6) resulting damage to the
20 promisee. Behnke v. State Farm General Insurance Co., 196 Cal.App.4th 1443, 1453
21 (2011). The elements of negligent misrepresentation are: (1) a misrepresentation of a past
22 or existing material fact; (2) without reasonable grounds for believing it to be true; (3) with
23 intent to induce another's reliance on the fact misrepresented; (4) ignorance of the truth
24 and justifiable reliance thereon by the party to whom the misrepresentation was directed;
25 and (5) damages. Fox v. Pollack, 181 Cal.App.3d 954, 962 (1986).

26 Plaintiff's complaint was originally filed in state court, and as a result, plaintiff's third
27 and fourth causes of action do not meet the standard of Federal Rule of Civil Procedure
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1 9(b), which requires fraud-related claims to be pled with particularity. Plaintiff's third and
2 fourth causes of action do not identify the "who, what, when, and where" of the alleged
3 promise or misrepresentation, and do not provide factual support for his allegations that
4 defendant made a promise with the intent not to perform when the promise were made, or
5 that defendant made a misrepresentation without reasonable grounds for believing it to be
6 true. Accordingly, plaintiff's third and fourth causes of action are DISMISSED with leave to
7 amend, so that plaintiff can re-plead these claims in accordance with Rule 9(b)'s
8 requirements.

9 Plaintiff's fifth cause of action is brought under Cal. Labor Code § 970, which makes
10 it unlawful to "influence, persuade, or engage any person to change from one place to
11 another in this State or from any place outside to any place within the State, or from any
12 place within the State to any place outside, for the purpose of working in any branch of
13 labor, through or by means of knowingly false representations." Plaintiff admits that he was
14 only required to attend work in New Jersey for one week out of each month, but argues that
15 the California Supreme Court has held that trips of short duration may trigger liability under
16 section 970. Collins v. Rocha, 7 Cal.3d 232 (1972). However, in Collins, the court made
17 clear that section 970 covers "temporary as well as permanent relocation of residence, as
18 contrasted with a mere change in the site of employment." Id. at 239 (emphasis added).
19 Thus, even if for a short duration, section 970 still requires a relocation of residence, and
20 not merely a site visit. Plaintiff has not (and cannot) allege that he was required to relocate
21 his residence, and as a result, his fifth cause of action is DISMISSED without leave to
22 amend.

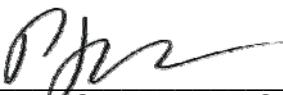
23 Finally, plaintiff asserts a sixth cause of action for wrongful termination in violation of
24 public policy. In order to state such a claim, plaintiff must identify the specific public policy
25 implicated by defendant's actions. Plaintiff argues that his contract-related and fraud-
26 related claims form the basis of his wrongful termination claim. Because those claims have
27 been dismissed, plaintiff's sixth cause of action must be DISMISSED with leave to amend
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1 for the same reasons.

2 Plaintiff has until **June 26, 2013** to file an amended complaint in accordance with
3 this order. No new claims or parties may be added without leave of court or the written
4 stipulation of all parties. Defendant has until **July 17, 2013** to answer or otherwise respond
5 to the complaint.

6 **IT IS SO ORDERED.**

7 Dated: May 31, 2013


8 PHYLIS J. HAMILTON
9 United States District Judge